

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROBERT BITTINGER,	§	
	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. H-10-1745
	§	
WELLS FARGO BANK NA, <i>In Its</i>	§	
<i>Name and as Trustee for the Certificate</i>	§	
<i>Holders of Soundview Home Loan Trust</i>	§	
<i>2007-OPTI, Asset-Backed Certificates</i>	§	
<i>Series 2007-OPTI, et al.,</i>	§	
	§	
Defendants.	§	

ORDER

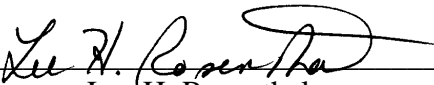
Currently pending before this court is Wells Fargo and American Home Mortgage Servicing, Inc. (“AHMSI”)’s motion for summary judgment. (Docket Entry No. 48). That motion addresses Robert Bittinger’s lone surviving claim against the defendants: “the wrongful foreclosure claim based on the alleged failure to provide notice and the allegedly incorrectly calculated payments.” (Docket Entry No. 43, at 13). The court previously dismissed all of Bittinger’s other claims, including the wrongful-foreclosure claim based on the allegation that AHMSI did not own the promissory note at the time of the nonjudicial foreclosure, both of which are at issue in this case. Specifically, this court wrote:

This court did not previously address the allegation that AHMSI did not hold the note at the time of the nonjudicial foreclosure. This allegation is precluded by the copy of the note th[at] AHMSI produced to Bittinger and that he attached to his amended complaint as Exhibit E. The holder of a note endorsed in blank is its owner. TEX. BUS. & COM. CODE §§ 3.205(b), 3.301.

(Docket Entry No. 43, at 8).

A review of the record indicates that additional information on the status of AHMSI with respect to the note at the time of foreclosure would be helpful. The record evidence suggests, but does not appear to establish, that: (1) the note had previously been transferred from Option One Mortgage Company to Wells Fargo, (2) Wells Fargo was the note's holder at the time of the nonjudicial foreclosure, and (3) AHMSI acted as the note's servicer at that time. At docket call, the court will ask the parties to address the issue of the note's transfer. The parties should submit any additional evidence that shows the roles of Wells Fargo and AHMSI at the time of foreclosure—such as note servicer or note holder—no later than three days before the hearing and docket call.

SIGNED on October 13, 2011, at Houston, Texas.



Lee H. Rosenthal
United States District Judge